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10/589,871	08/18/2006	Rene Roscher	27579U	3799

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EXAMINER	
CHONG, YONG SOO	

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte RENE ROSCHER and
CHRISTOPH KARL

Application 10/589,871
Technology Center 1600

DECISION ON PETITION

This is a decision on the “Petition Under 37 CFR § 41.3” filed June 22, 2011 (“Petition”). The Petition requests a two-month extension of time to file a Reply Brief.

FINDINGS

- 1) On June 28, 2010, Appellants filed a Notice of Appeal and a three month extension of time.
- 2) On January 26, 2011, Appellants filed an Appeal Brief and a five month extension of time.
- 3) On April 20, 2011, an Examiner’s Answer was mailed to Appellants.
- 4) The Examiner’s Answer contains a new ground of rejection.
- 5) On April 22, 2011 the Examiner’s Answer was returned to the United States Patent and Trademark Office as undeliverable.
- 6) The Petition indicates that Appellants were made aware of the Examiner’s Answer due to a phone call from the Examiner on June 21, 2011.
- 7) On June 22, 2011, Appellants filed their petition.
- 8) There is no indication that the Examiner’s Answer was remailed to Appellants.
- 9) The Petition requests a two-month extension of time because:

Petitioners /Appellants would simply like a fair opportunity to respond to the Examiner’s Answer. Accordingly, Petitioners /Appellants respectfully petition the Chief Administrative Patent Judge to establish a two-month time period for filing a Reply Brief in the captioned application for two months after June 21, 2011, the date that Petitioners/Appellants were made aware that an Examiner’s Answer was mailed, i.e. August 21, 2011.

(Petition 2).

10) Requests for extensions of time to file a Reply Brief are covered by 37 CFR §41.43(c), which is provided below:

Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

11) 37 CFR §1.136(b) further states:

When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for *sufficient cause and for a reasonable time specified*. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute.

(*Emphasis added.*)

DISCUSSION

In view of the fact that Appellants were made aware of the Examiner's Answer the day after the Reply Brief was due, the Request for an Extension of Time is **Granted**. Appellants will be given two months from the date of this Decision, to file a Reply Brief.

DECISION

In view of the foregoing, the Petition is GRANTED.

A handwritten signature in black ink, appearing to read "James D. Smith", written over a horizontal line.

James D. Smith
Chief Administrative Patent Judge